S T A T E O F N E W Y O R K

6949--A

I N S E N A T E

April 7, 2014

Introduced by Sen. MARCHIONE -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the energy law, in relation to permitting agencies, municipalities and public authorities to enter into power purchase agreements

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 9-102 of the energy law is amended by adding a new subdivision 5 to read as follows:

5. "SOLAR POWER PURCHASE AGREEMENT" MEANS AN AGREEMENT FOR THE PURCHASE OF ELECTRICITY, PRODUCED BY SOLAR POWERED ELECTRICITY GENERATING SYSTEMS, IN WHICH A PERSON AGREES TO INSTALL, MAINTAIN AND MANAGE SOLAR POWERED ELECTRICITY GENERATING SYSTEMS OR EQUIPMENT ON REAL PROPERTY OF AN AGENCY, MUNICIPALITY OR PUBLIC AUTHORITY, TO PRODUCE SUCH ELECTRICITY WITH NO CAPITAL OUTLAY OR INVESTMENT BY THE AGENCY, MUNICIPALITY OR PUBLIC AUTHORITY, IN EXCHANGE FOR A LONG TERM AGREEMENT BY SUCH AGENCY, MUNICIPALITY OR PUBLIC AUTHORITY TO PURCHASE THE ELECTRICITY PRODUCED BY SUCH SOLAR POWERED ELECTRICITY GENERATING SYSTEMS OR EQUIPMENT AT A CURRENT COST PER KILOWATT HOUR LESS THAN THAT OFFERED BY THE UTILITY COMPANY SERVICING SUCH AGENCY, MUNICIPALITY OR PUBLIC AUTHORITY AND AT A TOTAL COST OVER THE LIFE OF THE AGREEMENT THAT IS REASONABLY DETERMINED BY THE GOVERNING BOARD OF SUCH AGENCY, MUNICIPALITY OR PUBLIC AUTHORITY TO BE LESS THAN IT WOULD OTHERWISE PAY TO THE UTILITY SERVICING ITS LOCATION.

S 2. Section 9-103 of the energy law, as added by chapter 733 of the laws of 1985, subdivision 1 as amended and subdivision 5 as added by chapter 638 of the laws of 1989, subdivision 3 as amended and subdivisions 6 and 7 as added by chapter 368 of the laws of 1994, subdivision 4 as amended by chapter 83 of the laws of 1995 and subdivision 8 as added by section 78 of part A of chapter 436 of the laws of 1997, is amended to read as follows:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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S 9-103. Energy performance contracts AND SOLAR POWER PURCHASE AGREEMENTS. 1. Notwithstanding any other provision of law, any agency, municipality, or public authority, in addition to existing powers, is authorized to enter into energy performance contracts of up to thirty-five years duration OR SOLAR POWER PURCHASE AGREEMENTS OF UP TO TWENTY YEARS DURATION, provided, that the duration of any such contract OR AGREEMENT shall not exceed the reasonably expected useful life of the energy facilities, SOLAR POWERED ELECTRICITY GENERATING SYSTEMS or equipment subject to such contract; AND PROVIDED FURTHER THAT WITH RESPECT TO SOLAR POWER PURCHASE AGREEMENTS, SUCH AGENCY, MUNICIPALITY OR PUBLIC AUTHORITY IS AUTHORIZED TO RESELL ANY EXCESS ELECTRICITY GENERATED BY SUCH SOLAR POWERED ELECTRICITY GENERATING SYSTEMS OR EQUIPMENT THROUGH THE USE OF A NET METERING SYSTEM, ELECTRICITY CREDITS OR OTHER MEANS APPROVED BY THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, THE NEW YORK INDEPENDENT SYSTEM OPERATORS OR THE PUBLIC SERVICE COMMISSION.

2. Any energy performance contract entered into by any agency or municipality shall contain the following clause: "This contract shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the contract, and no liability on account therefor shall be incurred beyond the amount of such monies. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the contract."

3. In the case of a school district or a board of cooperative educational services, an energy performance contract OR SOLAR POWER PURCHASE AGREEMENT shall be an ordinary contingent expense, and shall in no event be construed as or deemed a lease or lease-purchase of a building or facility, for purposes of the education law.

4. Agencies, municipalities, and public authorities are encouraged to consult with and seek advice and assistance from the New York state energy research and development authority concerning energy performance contracts AND/OR SOLAR POWER PURCHASE AGREEMENTS.

5. Notwithstanding any other provision of law, in order to convey an interest in real property necessary for the construction of facilities or the operation of equipment provided for in an energy performance contract OR SOLAR POWER PURCHASE AGREEMENT, any agency, municipality or public authority may enter into a lease of such real property to which it holds title or which is under its administrative jurisdiction as is necessary for such construction or operation, with an energy performance contractor, OR SOLAR POWER PURCHASE AGREEMENT for the same length of time as the term of such energy performance contract OR SOLAR POWER PURCHASE AGREEMENT, and on such terms and conditions as may be agreeable to the parties thereto and are not otherwise inconsistent with law, and notwithstanding that such real property may remain useful to such agency, municipality or public authority for the purpose for which such real property was originally acquired or devoted or for which such real property is being used.

6. In lieu of any other competitive procurement or acquisition process that may apply pursuant to any other provision of law, an agency, municipality, or public authority may procure an energy performance OR SOLAR POWER PURCHASE contractor by issuing and advertising a written request for proposals in accordance with procurement or internal control policies, procedures, or guidelines that the agency, municipality, or public authority has adopted pursuant to applicable provisions of the state

finance law, the executive law, the general municipal law, or the public authorities law, as the case may be.

7. Sections one hundred three and one hundred nine-b of the general municipal law shall not apply to an energy performance contract OR SOLAR POWER PURCHASE AGREEMENT for which a written request for proposals is issued pursuant to subdivision six of this section.

8. In the case of a school district or a board of cooperative educational services, an energy performance contract shall be developed and approved pursuant to the requirements of this section and pursuant to regulations promulgated by the commissioner of education in consultation with the New York state energy research and development authority. Such regulations shall include, but shall not be limited to: a list of the appropriate type of projects that qualify as energy performance contracts; an approval process that includes review of the type and nature of the proposed project, the scope and nature of the work to be performed, and a detailed breakdown of the energy savings to be derived each year and for the duration of the energy performance contract; and a process for ensuring that districts have obtained financing at the lowest cost possible. Such regulations shall require that all energy performance contracts which contain maintenance and monitoring charges as part of the energy performance contract price state such maintenance and monitoring charges separately in the contract in a clear and conspicuous manner. Such regulations shall not apply to energy performance contracts entered into prior to the effective date of such regulations, nor shall they apply to energy performance contracts for which a request for proposals was issued prior to such effective date.

9. IN THE CASE OF A SCHOOL DISTRICT OR A BOARD OF COOPERATIVE EDUCATIONAL SERVICES, A SOLAR POWER PURCHASE AGREEMENT SHALL BE DEVELOPED AND APPROVED PURSUANT TO THE REQUIREMENTS OF THIS SECTION. THE COMMISSIONER OF EDUCATION IN CONSULTATION WITH THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY SHALL PROMULGATE SUCH REGULATIONS AS DETERMINED TO BE NECESSARY TO REGULATE THE CONSTRUCTION, INSTALLATION AND MAINTENANCE OF SOLAR POWERED ELECTRICITY GENERATING SYSTEMS OR EQUIPMENT AND TO REQUIRE THAT ALL SOLAR POWER PURCHASE AGREEMENTS WHICH CONTAIN MAINTENANCE AND MONITORING CHARGES STATE SUCH MAINTENANCE AND MONITORING CHARGES SEPARATELY IN THE AGREEMENT IN A CLEAR AND CONSPICUOUS MANNER. SUCH REGULATIONS SHALL NOT APPLY TO SOLAR POWER PURCHASE AGREEMENTS ENTERED INTO PRIOR TO THE EFFECTIVE DATE OF SUCH REGULATIONS, NOR SHALL THEY APPLY TO SOLAR POWER PURCHASE AGREEMENTS FOR WHICH A REQUEST FOR PROPOSALS WAS ISSUED PRIOR TO SUCH EFFECTIVE DATE.

S 3. This act shall take effect immediately.